

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

TIMOTHY C. RADER, Respondent,)	No. ED95905
)	
vs.)	
)	
WERNER ENTERPRISES, INC., and ST.)	
PAUL TRAVELERS INSURANCE)	
COMPANY, Appellants,)	Appeal from the Labor and Industrial
)	Relations Commission
and)	
)	
TREASURER OF MISSOURI AS)	
CUSTODIAN OF SECOND INJURY FUND,)	
Respondent.)	Filed: January 10, 2012

Werner Enterprises (Employer) appeals the final order of the Labor and Industrial Relations Commission (Commission) granting Timothy Rader (Claimant) weekly permanent total disability benefits and future medical costs as a result of the injury he sustained working for Employer on May 29, 2003. Employer claims the Commission erred in finding that: (1) the Commission had jurisdiction over Claimant's claim; (2) Claimant was an employee and not an owner-operator; (3) Claimant sustained a significant back injury on May 29, 2003; (4) Claimant was entitled to future medical care for his back condition; (5) Claimant was permanently and totally disabled solely as the result of the May 29, 2003 injury; and (6) Claimant's average weekly wage was \$1,312.32.

AFFIRMED.

Division Five Holds: The Commission properly exercised jurisdiction over Claimant's workers' compensation claim because: (1) Claimant was injured in Missouri; and (2) the choice of law provision contained in the parties' Owner-Operator Coverage Agreement was intended to apply to an independent contractor relationship rather than an employer-employee relationship. The court also finds that competent and substantial evidence supports the Commission's findings that: (1) Claimant was an employee, and not an owner-operator under Section 287.020.1, because Claimant did not own the truck he drove for Employer; (2) Claimant's May 2003 injury caused his disability; (3) Claimant was entitled to future medical care for his back condition resulting from the May 2003 injury; (4) Claimant was permanently and totally disabled as a result of the May 2003 injury; and (5) Claimant's weekly wage was \$1,312.32.

Opinion by: Patricia L. Cohen, J.
Gary M. Gaertner, Jr., P.J., and Mary K. Hoff, J., concur.

Attorney for Appellant: Mary Anne Lindsey

Attorneys for Respondent: Stephen W. Thurmer (Timothy C. Rader)
Carol L. Barnard (Treasurer of Missouri as Custodian of Second
Injury Fund)

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS
BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT
BE QUOTED OR CITED.**